

Cox Enterprises, Inc., d/b/a Atlanta Newspapers and Printing and Graphic Communications Union, Local No. 10, Subordinate to International Printing and Graphic Communications Union, Petitioner. Case 10-RC-12417

August 23, 1982

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On July 17, 1981, the Acting Regional Director for Region 10 issued his Decision and Direction of Election in the above-entitled proceeding, in which he found appropriate for the purposes of collective bargaining a unit consisting of all route managers, Constitution distributors, jumpers, sales helpers, day-off and vacation relief employees, and the platform helper employed by the Employer in the five-county "Metro" Atlanta, Georgia, area including Cobb, Gwinnett, Fulton, DeKalb, and Clayton Counties, but excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Acting Regional Director's Decision and Direction of Election, contending that the route managers should be excluded because they are supervisors within the meaning of the Act and that home delivery distributors should be included in the appropriate unit.¹ Printing and Graphic Communications Union, Local No. 10, Subordinate to International Printing and Graphic Communications Union, herein the Union, filed a brief in opposition.

By telegraphic order dated August 10, 1981, the Board granted the Employer's request for review and stayed the scheduled election. Thereafter, the Employer and Union each filed a brief on review.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review,

¹ The Employer contended that branch captains and field sales representatives as well as circulation department employees responsible for the "Retail" zone, a 23-county area, should be included in the appropriate unit. The Acting Regional Director did not include any of these employees in the appropriate unit. The Employer did not seek review of his decision as to these employees. The Employer's circulation department also has a third geographic division for the remainder of Georgia and out-of-state sales. Neither party sought the inclusion of these employees in the appropriate unit.

including the parties' briefs on review, and makes the following findings:

The Employer is a Delaware corporation with an office and place of business in Atlanta, Georgia, where it is engaged in printing and publishing daily and Sunday newspapers, the Atlanta Constitution in the morning, and the Atlanta Journal in the evening. The Union seeks an election among a proposed unit of circulation department single copy sales employees who work in the "Metro" zone.² The single copy sales department is responsible for the distribution and sale of newspapers, primarily through news stands, retail outlets, and coin-operated racks, though also by person directly to customers where volume is high or where theft problems interfere with the profitability of coin-operated vending machines.

The "Metro" zone single sales department consists of a manager, 3 zone managers, 11 district supervisors, 55 route managers, 52 Constitution distributors, 96 jumpers, 38 sales helpers, 17 day-off and vacation relief employees, and 1 platform helper.³ The Union contends that the appropriate unit should include the route managers, Constitution distributors, jumpers, sales helpers, relief employees, and platform helper. The Employer contends that the route managers should be excluded on the basis that they are supervisors within the meaning of the Act.

The job description for route managers includes:

Responsibilities

1. Responsible for development of his/her employees. Can effectively recommend to hire or fire said employees.
2. Administer all personnel functions
 - a. recruiting applicants for all positions
 - b. training of all employees
 - c. implementing company policy and procedure
 - d. approve all payroll time slips and start forms

² The "Metro" zone is an administrative division consisting of Cobb, Gwinnett, Fulton, DeKalb, and Clayton Counties.

³ Both parties focused on the task of newspaper distribution in defining what group of employees constitutes an appropriate unit. Of the zone managers, only one, and of the district supervisors, only seven (with one of the positions vacant at the time of the hearing), have responsibilities related to newspaper distribution and employees involved in that task. The parties stipulated, and the Acting Regional Director found, that Circulation Director James Bustraan, Sales and Marketing Director John Schuler, Single Copy Department Manager Rick Gebenstaben, Zone Managers Robert Wadick and Brian Moore, and Single Copy Department Supervisors Herman Haynes, Billy Shumate, Nancy Dean, Bill McGee, Terry Allen, and Joe Young are supervisors within the meaning of the Act and excluded from the unit.

Their principal work consists of the distribution of the two afternoon editions of the Atlanta Journal. They also coordinate the work of Constitution distributors, jumpers, and relief employees to ensure that all editions are distributed according to schedule. Generally speaking, each route manager works in conjunction with one distributor and one or two jumpers. Distributors distribute the morning paper, the Atlanta Constitution. Jumpers ride along with distributors and route managers, collate inserts when necessary, and jump on and off the vehicle to put newspapers in vending machines if machines are part of the route. Sales helpers also work under some route managers. They sell newspapers directly to consumers where volume is high or where theft problems interfere with the profitability of vending machines. If a distributor or jumper is absent, that route's manager assumes the absent employee's responsibilities.⁴

Route managers work 6 days a week and are paid on an hourly and commission basis. Distributors, jumpers, sales helpers, and relief employees are hourly paid, part-time employees. The Employer sets the rates of pay and limits distributors' and jumpers' hours to 25 hours a week. Route managers may not authorize overtime for any employees. The Employer allocates each route manager 30 hours' worth of pay for jumpers but route managers decide how to assign and distribute those hours. Route managers sign their part-time assistants' timecards.

Route managers get jumpers and distributors from various sources. Sometimes the Employer provides jumpers or distributors for route managers and sometimes route managers find their own. Generally, route managers interview jumper and distributor applicants and send their applications to the Employer's office. Some route managers notify the Employer when they start using a new jumper or distributor while others wait for the Employer's approval before assigning work to new employees. If a route manager finds a jumper or distributor unsuitable or his or her performance unsatisfactory, the route manager either notifies the Employer, which then discharges the employee, or the route manager may accomplish the discharge and then inform the Employer. Route managers also warn and discipline jumpers and distributors who are late, fail to show up for work, or otherwise perform inadequately. Route managers sometimes grant time off to jumpers and distributors and

allow them to rearrange their hours. There is some evidence that route managers settle employee grievances.

The Acting Regional Director cited *The Washington Post Company*, 254 NLRB 168 (1981), as support for his finding that although route managers hire their part-time assistants that did not establish 2(11) supervisory status because hiring them required no discretion or independent judgment. *The Washington Post* is distinguishable in that there the route managers selected their assistants from a list provided by the employer, whereas here the route managers often exercise discretion in advertising for, locating, and selecting their assistants without Employer assistance.

The Union contends that the limits the Employer imposes on the route managers' discretion indicate they are not utilizing independent judgment in carrying out their job. The Union cites as examples of the route managers' lack of discretion that route managers may not assign more than 25 hours a week to any one jumper, as well as their inability to set wages or award raises. However, as noted above, there are numerous instances where route managers effectuate personnel actions with regard to their jumpers and distributors, including hire, discipline, and discharge. Further, such personnel actions are often taken without securing the Employer's prior approval.

Upon the foregoing, contrary to the Acting Regional Director, we find that route managers are supervisors within the meaning of Section 2(11) of the Act. Although some route managers do not exercise the full extent of their authority, it is well established that it is the possession of supervisory power rather than the exercise of that authority that determines whether particular employees are supervisors. *N.L.R.B. v. Brown & Sharpe Manufacturing Company*, 169 F.2d 331 (1st Cir. 1948); *Hook Drugs, Inc.*, 191 NLRB 189, 191 (1971). We are satisfied that the Employer's route managers have the authority to hire, discipline, and fire their assistants, and that the exercise of that authority requires use of their discretion and independent judgment. Thus, we find the route managers are supervisors within the meaning of Section 2(11) of the Act and that the Acting Regional Director erred when he included them in the appropriate unit.⁵

⁴ The other employees in the unit are relief employees and the platform helper. Day off and vacation relief employees substitute on a regular basis for other employees to cover their routes during scheduled time off. The platform helper works at the Employer's main plant helping with bulk distribution. Route managers have less interaction with these employees than with distributors, jumpers, and sales helpers.

⁵ At the hearing, the Employer requested the Acting Regional Director to conduct a collateral investigation into the validity of the showing of interest submitted in support of the petition because it claimed that supervisors solicited authorization cards. It based this assertion on route managers' alleged involvement in the union campaign. The Acting Regional Director determined, albeit erroneously, that the route managers are not supervisors; for that reason he did not respond to the Employer's request for such an investigation. In view of our determination herein the

Continued

The Employer also contends that the appropriate unit should include its home delivery distributors. Home delivery distributors are part-time, 7-day-a-week, hourly paid employees who deliver newspapers to home residences that have paid-in-advance subscriptions. Their supervision is entirely separate from all employees in the unit and the internal organization for home delivery distribution differs from that of all those in the unit. We adopt the Acting Regional Director's finding on this issue and do not include home delivery distributors in the appropriate unit.

Regional Director must reconsider the Employer's request. Our Direction of Election herein is conditioned on the Regional Director's determination that the showing of interest continues to be valid.

Accordingly, we find the following unit appropriate for collective bargaining:

Constitution distributors, jumpers, sales helpers, day-off and vacation relief employees and the platform helper employed by the Employer in the five-county "Metro" Atlanta, Georgia, area including Cobb, Gwinnett, Fulton, DeKalb and Clayton Counties, but excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]